

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 8, 2018

Thru: Bridget C. Bohac, Chief Clerk
Stephanie Bergeron Perdue, Interim Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2017-0065-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 35, Emergency and Temporary Orders and Permits; Temporary
Suspension or Amendment of Permit Conditions
Chapter 37, Financial Assurance
Chapter 50, Action on Applications and Other Authorizations
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
Chapter 80, Contested Case Hearings
Chapter 281, Applications Processing
Chapter 290, Public Drinking Water
Chapter 291, Utility Regulations
Chapter 293, Water Districts
HB 1600 and SB 567 (83rd), HB 294 and SB 1842 (85th); and Staff-Initiated
Regulatory Assessment Fee Revisions
Rule Project No. 2013-057-291-OW

Background and reason(s) for the rulemaking:

This rulemaking is proposed to implement House Bill (HB) 1600, and Senate Bill (SB) 567, 83rd Texas Legislature, 2013; and HB 294 and SB 1842, 85th Texas Legislature, 2017. HB 1600 by Representative Byron Cook and SB 567 by Senators Kirk Watson and Robert Nichols, related to the transfer of the utilities and rates program to the Public Utility Commission of Texas (PUC). HB 294, by Representative Armando Walle, adds additional criteria to Texas Water Code (TWC), §13.412(a) that will allow the Texas Commission on Environmental Quality (TCEQ, agency, or commission) to request the Attorney General appoint a receiver to a water or sewer utility that violates a final judgment issued by a district court in a suit brought by the Attorney General under TWC, Chapter 7 or 13; or Texas Health and Safety Code (THSC), Chapter 341. SB 1842 amends THSC, §341.035(d) to include a Class A utility as defined by TWC, §13.258 among the entities exempt from the requirement to file a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a certificate of convenience and necessity (CCN) under TWC, §13.258 for the area in which the construction of the public drinking water supply will operate.

This rulemaking amends and repeals obsolete TCEQ rules relating to the economic regulation of water and sewer utilities as directed by the legislature.

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Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would amend and repeal sections in 30 TAC Chapters 35, 37, 50, 55, 80, 281, 290, 291, and 293 to reflect changes to TWC, Chapters 5 and 11 - 13. Additionally, the proposed rulemaking would amend §291.76 (Regulatory Assessment) to facilitate the ability to convert the Regulatory Assessment Fee (RAF) to an on-line reporting application.

B.) Scope required by federal regulations or state statutes:

The rulemaking implements HB 1600 and SB 567 (83rd Texas Legislature, 2013) and HB 294 and SB 1842 (85th Texas Legislature, 2017). No federal statute or rule directly applies.

C.) Additional staff recommendations that are not required by federal rule or state statute:

The TCEQ staff recommends proposing to amend §291.76 to convert the RAF from a self-report, self-pay fee to a billed fee. This will allow for an efficient, on-line reporting, invoicing, and payment structure within the confines of the commission's existing SUNSS, Basis2, and ePay applications. This fee conversion will allow for the collection of delinquent fees, late fees, and penalty fees as directed by 30 TAC Chapter 12, Payment of Fees.

TWC, §5.701(n)(5) tasks the commission with collection of the RAF and establishing associated payment and collections procedures. The proposed amendment to §291.76(d), (e), (h), (i), and (k) would allow the collections and penalties process to fit into the existing commission invoicing and collection structure, based on Chapter 12. The existing rule does not align with the functionality of existing commission resources including Basis2, the SUNSS portal, and ePay applications.

§291.76(d)

The proposed amendment to §291.76(d) would provide clarification regarding the term "amount payable" to ensure regulated utilities understand the amount of RAF (i.e., "regulatory assessment amount payable") payable to the commission versus the bill amounts payable to the utility from their customers for water and sewer invoices. This has been a common area of confusion for the regulated community. The RAF rule does not apply to ancillary fees (e.g., late fees, tap fees, reclaimed water, etc.). The current rule language, as written, may result in improper calculation, reporting, and remittance of fees.

§291.76(e)

The proposed amendment to §291.76(e) would clarify that amounts actually received within the calendar year are subject to the RAF. The current language refers to "payment period" which has caused some confusion for the regulated community. This confusion has led utilities to look for payments issued for service during the calendar year, billed in arrears, and has delayed reporting or lead to incorrect reporting.

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§291.76(h)

The proposed amendment to §291.76(h) would move the clause "retail water and sewer" before the words "charges" and "assessment collection" to specify that "retail water and sewer" apply to both "charges" and the "assessment collection."

§291.76(i)

The proposed amendment to §291.76(i) would specify the due date for reporting, data item(s) to be reported, and means by which to report. Section 291.76(i)(1) - (3) would provide documented invoicing protocols and ensure that reporting remains a requirement, separate from invoicing. This proposed amendment would convert the RAF from a self-report, self-pay, paper process to an electronic reporting, invoiced process within the confines of existing commission applications and Chapter 12.

§291.76(k)

The proposed amendment to §291.76(k) would specify the payment resources available through the commission and general penalty, interest, and collections information.

Statutory authority:

The rulemaking would be proposed under TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

Effect on the:

A.) Regulated community:

HB 1600 and SB 567

Beginning September 1, 2014, the regulated community began working with the PUC involving the economic regulation of water and sewer utilities. Water and wastewater utilities that are required to remit RAFs continue to remit RAFs to the TCEQ.

HB 294

Beginning September 1, 2017, a receiver, or temporary manager, can be appointed to a water and/or wastewater utility that violates a final judgment issued by a district court in a suit brought by the Attorney General under TWC, Chapter 7 or 13; or THSC, Chapter 341.

SB 1842

Beginning September 1, 2017, a Class A utility, as defined by TWC, §13.002, will no longer be required to submit a business plan for a public drinking water supply system with the TCEQ. The Class A utility is required to have applied for or been granted an amendment of a CCN under TWC, §13.258 for the area in which the construction of the public drinking water supply will operate.

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Staff proposed amendments

The utilities to which the RAF is applicable will transition their reporting from a paper coupon with manual fee calculation and remittance to an on-line portal which auto calculates and offers ePay or invoice options. The automatic calculation of the applicable fee will eliminate incorrect fee remittance due to human mathematical error.

B.) Public:

HB 1600 and SB 567

There are no anticipated effects on the public as the economic regulation of water and sewer utilities was transferred to the PUC on September 1, 2014.

HB 294

The public may be impacted by an increase in the water and or sewer service rates to fund any required system upgrades, temporary manager fees, or receiver fees; however, those costs are unknown.

SB 1842

There are no anticipated effects on the public as a result of Class A utilities no longer being required to submit a business plan for a public drinking water supply system with the TCEQ.

Staff recommended proposed amendments

The public receiving services from utilities should see no impact. The fee the public is charged remains unchanged.

C.) Agency programs:

The staff recommended proposed amendments to §291.76 would convert the RAF from a self-report, self-pay fee to an electronic self-report, billed fee within the commission's existing business processes and resources. This would improve efficiency of fee administration through utilization of existing commission technological resources and leveraging them to accomplish additional reporting and remittance.

The automatic calculation of the applicable fee would eliminate fee remittance errors. The improved accuracy of fees calculation would improve customer service and interactions with the regulated community, reduce the resources diverted to refunding of overpayment or demand of underpayment, and allow for a strong audit trail of transaction records.

The electronic reporting function would be more efficient concerning data entry, fee calculation and remittance, invoicing, and financial administration processes. The inclusion of the fee in the commission's existing invoice process will ensure payment coupons are compatible with the Financial Administration Division's physical equipment and include the accounts in the existing fees, penalties, and collections procedures.

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Stakeholder meetings:

There were no stakeholder meetings held; however, a rule public hearing will be held during the comment period.

Potential controversial concerns and legislative interest:

There are no controversial issues associated with the implementation of HB 1600 and SB 567. The proposed rulemaking would implement HB 1600 and SB 567 by amending and repealing obsolete TCEQ rules relating to the economic regulation of water and sewer utilities.

There are no anticipated controversial concerns with HB 294, SB 1842, or the staff recommended proposed rule amendments. Representatives Lyle Larson, Eddie Lucio III, and Armando Walle have all shown interest in HB 294.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

State statutes

Without approval, Chapters 35, 37, 50, 55, 80, 281, 290, 291, and 293 will be inconsistent with existing state statutes. There are no alternatives to this rulemaking.

Staff recommended proposed amendments

The staffs' recommended proposed amendments could remain unchanged and the RAF could continue to be implemented manually as a self-report, self-pay fee. However, the rule change is necessary to change the self-report, self-pay fee to a self-report, billed fee to allow the agency to determine the liability of each person responsible and generate a billing invoice to the customer. Once the liability is established, the customer has been billed, and the liability becomes delinquent, all agency collection tools will apply, to include but not be limited to, Protocol for Delinquent Fees and Penalties in Chapter 12, Comptroller's Warrant Hold system, and referral to a private collection firm through the agency's collection contract.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: June 27, 2018

Anticipated *Texas Register* publication date: July 13, 2018

Anticipated public hearing date (if any): August 7, 2018

Anticipated public comment period: July 13, 2018 - August 13, 2018

Anticipated adoption date: December 12, 2018

Agency contacts:

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Attachments:

HB 1600 (83rd Texas Legislature, 2013)

SB 567 (83rd Texas Legislature, 2013)

HB 294 (85th Texas Legislature, 2017)

SB 1842 (85th Texas Legislature, 2017)

cc: Chief Clerk, 2 copies
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